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February 23, 2006

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Ms. Marlene Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

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FEB 23 2006

**Federal Communications Commission
Office of Secretary**

Re: Redacted Copies of Comments containing Confidential Information in WC Docket No.
05-281

Dear Ms. Dortch:

Attached are two copies in redacted form of comments that we are filing today on behalf of General Communication, Inc. We are also filing, under separate cover, one copy of the same in unredacted form.

Please let me know if I can be of further assistance. I can be reached at 202 730 1300.

Sincerely,



John T. Nakahata
Counsel to General Communication, Inc.

05-281-011
FEB 23 2006

Before the
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED**
Washington, D.C. 20554

FEB 23 2006

Federal Communications Commission
Office of Secretary

In the Matter of Petition of ACS of
Anchorage, Inc. Pursuant to Section 10 of
the Communications Act of 1934, as
Amended, for Forbearance from Sections
251(c)(3) and 251(d)(1) in the Anchorage
LEC Study Area

WC Docket No. 05-281

REPLY COMMENTS OF GENERAL COMMUNICATION, INC.

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SUMMARY

General Communication, Inc. (“GCI”) is a competitive LEC that is expanding the level of full-facilities-based competition available to consumers in Anchorage, Alaska. While it is investing in its own facilities and rapidly transitioning from UNE loops to its own last-mile facilities, GCI’s work is not yet complete. The incumbent ILEC, ACS of Anchorage, Inc. (“ACS”), has nonetheless petitioned this Commission to remove its obligations to provide UNE access, seeking relief that would undermine the developing competition in the Anchorage markets. As GCI has already demonstrated in its Opposition to ACS’s Petition for Forbearance, ACS’s request depends on an oversimplified view of the Anchorage markets, disregards the paucity of currently available competitive alternatives to UNE loops in those markets, and lacks support in both law and fact.

Unsurprisingly, several entities have filed comments that substantiate GCI’s arguments in opposition to ACS’s Petition. Certain ILECs and ILEC trade associations, however, simply accept without reflection or analysis the assertions in ACS’s Petition and, thus, mimic its failings. *First*, like ACS, its supporters rest their arguments on an analysis of retail market share in Anchorage without accounting for the significant lack of competitive substitutes for UNE loops or acknowledging the differences in available alternatives between products and geography in Anchorage. These flaws directly contravene Commission precedent, including the recent *Omaha Forbearance Order*. *Second*, ACS’s supporters assume, with no support, that the removal of UNE access will spur GCI to invest in its own facilities. As GCI has demonstrated in its Opposition, and as many of ACS’s opponents in this proceeding also show, despite access to UNE loops

GCI is already accelerating deployment of its own full-facilities based cable telephony and therefore needs no additional incentive to invest in its own facilities. *Third*, many of the arguments advanced by ACS's supporters are based on factual inaccuracies and misunderstandings of the Anchorage markets. *Fourth*, although ACS did not have the benefit of the *Omaha Forbearance Order*, much of the relief that ACS requests—and that its supporters encourage—is unsupported by the *Omaha Forbearance Order*. *Fifth*, some of the comments from those supporting ACS appear calculated to disrupt GCI's operations and are thus at odds with the Section 10(a) and (b) forbearance analysis that is designed to protect consumers and the public interest and produce competitive telecommunications practices that are just and reasonable.

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	CONTRARY TO THE <i>OMAHA FORBEARANCE ORDER</i> , THE ACS SUPPORTERS RELY SOLELY ON THE RETAIL MARKET, UNDIFFERENTIATED BY PRODUCT OR GEOGRAPHY.....	4
A.	ACS Supporters Point Only to Competition in the Retail Market.	4
B.	ACS Supporters Fail to Acknowledge Product Differences.	6
C.	ACS’s Request for Forbearance Over the Entire Study Area is Baseless.	8
III.	FORBEARANCE IS NOT NECESSARY TO SPUR FACILITIES INVESTMENT.	9
IV.	THE ACS SUPPORTERS’ ARGUMENTS REST ON FACTUAL INACCURACIES.	12
A.	ACS Supporters Misrepresent GCI’s Current Ability to Provision Anchorage Customers Over its Own Last-mile Facilities.....	12
B.	GCI has Offered Access to Last-mile Facilities, Including Those Few Areas Where it is the Sole Provider.	14
C.	VoIP and Wireless are Not Substitutes for UNE Loops in Anchorage.....	16
D.	USTA Overstates the Burdens of ACS’s Incumbent Status.	17
V.	ACS SUPPORTERS ADVOCATE RELIEF UNSUPPORTED BY THE <i>OMAHA FORBEARANCE ORDER</i>	18
VI.	THE COMMENTS OF THE ACS SUPPORTERS ARE ANTICOMPETITIVE AND EVINCE A DESIRE TO DISRUPT GCI’S OPERATIONS.....	19
A.	MTA’s Comments Misrepresent Facts in Separate Proceedings in an Apparent Effort to Disrupt GCI Entry Into its Markets.	19
B.	USTA’s Request for Quick Relief Reveals its Interest in Disrupting Competition.....	21
VII.	CONCLUSION.....	22

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 251(d)(1) in the Anchorage LEC Study Area

WC Docket No. 05-281

REPLY COMMENTS OF GENERAL COMMUNICATION, INC.

I. INTRODUCTION

General Communication, Inc. ("GCI") has already demonstrated that ACS of Anchorage, Inc.'s ("ACS") request for forbearance from unbundling requirements in the Anchorage study area should be denied because ACS has wholly failed to demonstrate that its request meets the requirements of Section 10(a) and (b).¹ The comments in this proceeding confirm that conclusion. While numerous parties support and augment GCI's critique of ACS's factual and legal showing, parties advocating forbearance offer little more than overbroad readings of governing law and misunderstandings of the Anchorage markets, their comments failing to offer any analysis of the relevant product and geographic markets.

¹ See generally *Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act Filed By ACS of Anchorage*, WC Docket No. 05-281, at 56-92 (filed January 9, 2006) ("GCI Opposition").

Like ACS, its supporters disregard both the facts on the ground and legal precedent in an attempt to stifle competition by injuring GCI. Several ILECs filed comments that parrot many of the misguided arguments and oversimplifications that plague ACS's Petition. To prop up their call for forbearance, these ACS Supporters,² for example, rely on the same overbroad definition of the Anchorage markets that ACS offered—one that ignores the disparate alternatives available to the multiple geographic and product markets in Anchorage³—and close their eyes to GCI's rapid deployment of its own facilities in suggesting that forbearance is needed to spur last-mile competition.⁴ Further, to promote their desired outcome, the ACS Supporters offer grossly mistaken descriptions of GCI's current ability to serve customers over its own last-mile facilities⁵ and disregard the limits on forbearance contained in the Commission's recent *Omaha Forbearance Order*. Finally, USTA and MTA present arguments that amount to little more than thinly-veiled, anticompetitive attempts to disrupt GCI's steady deployment of its own facilities and entry into new markets before it can complete an orderly transition from UNE loops. Because the ACS Supporters simply followed the ACS template of pushing an anticompetitive result by ignoring facts and law, GCI has already well demonstrated that the ACS Petition must be denied.

² The "ACS Supporters" include entities that filed the following: *Comments of the Alaska Telephone Association*, WC Docket No. 05-281 (filed January 9, 2006) ("ATA Comments"); *Comments of Ketchikan Public Utilities*, WC Docket No. 05-281 (filed January 9, 2006) ("KPU Comments"); *Comments of Matanuska Telephone Association, Inc.*, WC Docket No. 05-281 (filed January 9, 2006) ("MTA Comments"); *Comments of the United States Telecom Association*, WC Docket No. 05-281 (filed January 9, 2006) ("USTA Comments"); *Comments of Verizon on ACS's Petition for Forbearance*, WC Docket No. 05-281 (filed January 9, 2006) ("Verizon Comments").

³ See KPU Comments at 5; MTA Comments at 14.

⁴ See KPU Comments at 3, 8; MTA Comments at 10; USTA Comments at 4.

⁵ See ATA Comments at 2-3; KPU Comments at 4; MTA Comments at 5.

A variety of entities across the country confirm and further substantiate that denial of ACS's petition is the right result. Like GCI, the ACS Opponents⁶ point out that the availability of competitive alternatives, not market share, is the correct test for determining whether forbearance is appropriate. Comptel, for instance, faults ACS for failing to demonstrate the existence of such alternatives and simply relying on retail market share to claim that full competition has arrived in Anchorage.⁷ Time Warner also notes that competition in the retail market is dependent to a large extent on the very UNE loops that ACS wants the freedom to restrict⁸—a position that ACS's own expert has elsewhere (but not in the declaration filed with ACS's Petition) conceded would be a circular basis for ending access to UNE loops.⁹ Moreover, many of the ACS Opponents highlight that even in its reliance on retail market share, ACS failed to acknowledge that the availability of competitive alternatives depends on the type of product and area of Anchorage.¹⁰ ACS Opponents also reiterate GCI's argument that the elimination of

⁶ The "ACS Opponents" include entities that filed the following: *Comments of Comptel*, WC Docket No. 05-281 (filed January 9, 2006) ("Comptel Comments"); *Initial Comments of Covad Communications Group, Inc.*, WC Docket No. 05-281 (filed January 9, 2006) ("Covad Comments"); *Opposition of McLeod USA Telecoms Services, Inc. Mpower Communications Corp.*, WC Docket No. 05-281 (filed January 9, 2006) ("McLeod Comments"); *Initial Comments of NuVox Communications, Inc. and XO Communications, Inc.*, WC Docket No. 05-281 (filed January 9, 2006) ("NuVox Comments"); *Comments of Talk America, Inc.*, WC Docket No. 05-281 (filed January 9, 2006) ("Talk America Comments"); *Opposition of Time Warner Telecom, Conversent Communications, CBeyond Communications and CTC Communications*, WC Docket No. 05-281 (filed January 9, 2006) ("Time Warner Comments").

⁷ See Comptel Comments at 2.

⁸ See Time Warner Comments at 21–22.

⁹ See *In the Matter of the New Requirements of 47 C.F.R. §51 Related to the FCC Triennial Review Order Interconnection Provisions and Policies, Reply Affidavit of Howard A. Shelanski*, RCA Docket No. R-03-07 at ¶5 (filed with the RCA April 2, 2004).

¹⁰ See Comptel Comments at 8–9; Time Warner Comments at 13–15; Covad Comments at 14–16; Nuvox Comments at 18–19.

access to UNE loops is not needed to spur investment.¹¹ In short, the comments of the ACS Opponents support and augment the grounds upon which GCI already demonstrated that ACS's Petition fails to meet the requirements of Section 10(a) and (b).

II. CONTRARY TO THE *OMAHA FORBEARANCE ORDER*, THE ACS SUPPORTERS RELY SOLELY ON THE RETAIL MARKET, UNDIFFERENTIATED BY PRODUCT OR GEOGRAPHY.

As the Commission reasoned in the *Omaha Forbearance Order*, and as GCI and other opponents to ACS's Petition have highlighted, competition in the retail market alone does not satisfy the Section 10(a) forbearance requirements with respect to UNE loops.¹² Rather, competitive facilities-based alternatives (including self-provisioning) must be available, as competition built largely on access to UNE loops is insufficient to constrain incumbent market power without the obligations imposed by Section 251(c)(3). Moreover, competitive alternatives must be present across relevant product and geographic markets, as facilities-based competition in the residential market for POTS lines, for example, does nothing to restrain monopoly power in the medium to large enterprise markets for DS1 lines.¹³

A. ACS Supporters Point Only to Competition in the Retail Market.

While giving lip service to the notion that the availability of competitive substitutes to UNE loops, and not market share, should drive the forbearance analysis, the ACS Supporters claim that forbearance is warranted based on nothing more than GCI's

¹¹ See Comptel Comments at 4; Covad Comments at 34.

¹² See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area, Memorandum Opinion and Order*, WC Docket No. 04-223 (rel. Dec. 2, 2005) ¶¶ 65, 68 ("Omaha Forbearance Order"); GCI Opposition at 71; Comptel Comments at 2; Time Warner Comments at 9–10.

¹³ See *Omaha Forbearance Order* ¶ 18.

retail market share in Anchorage, with no discussion of the lack of competitive substitutes for many of Anchorage’s customers.

USTA, for one, is entirely inconsistent. First, USTA states that “the existence of competitive substitutes” and not “market share loss” should obviate the need for UNE access.¹⁴ USTA then asserts that forbearance in Anchorage is warranted precisely because GCI’s success in the retail market will constrain ACS’s market power¹⁵—a contention that Dr. Sappington has thoroughly rebutted.¹⁶ USTA fails entirely to analyze the existence of competitive substitutes for the unbundled loops that ACS provides under Section 251(c)(3).

In a similar feat of circular reasoning, Verizon relies on ACS’s allegations—which are based almost entirely on retail market share—to conclude that competition is sufficiently ripe in Anchorage and that ACS has satisfied its forbearance burden.¹⁷ Thereafter, Verizon states that the existence of competitive substitutes and not market share is the correct forbearance test.¹⁸ Nowhere does Verizon, or any ACS Supporter for that matter, apply this test or explicate the available substitutes in any geographic or product market in Anchorage.

Evidently, Comptel’s observation that “GCI’s [retail] market success . . . forms the only basis for ACS’s request for elimination of the UNE rules in Anchorage” applies

¹⁴ See USTA Comments at 2–3.

¹⁵ See *id.* at 7.

¹⁶ See GCI Opposition, Exhibit D, *Declaration of David E. M. Sappington* ¶¶ 87-96 (“Sappington Decl.”).

¹⁷ See Verizon Comments at 2 (“Assuming the facts as alleged in their petition, ACS has easily satisfied its burden.”).

¹⁸ See *id.* at 4.

with equal force to the comments of the ACS Supporters.¹⁹ And like ACS, its supporters wholly fail to support forbearance under Section 10(a) and (b).

B. ACS Supporters Fail to Acknowledge Product Differences.

Not only do the ACS Supporters myopically limit their analysis to the retail market, rather than analyzing the availability of competitive alternatives to UNE loops, they fail to even acknowledge that not all customers in Anchorage require the same services. As the Commission recognized in its *Omaha Forbearance Order*, “services offered to mass market customers,” for example, are not always “adequate or feasible substitutes for services offered to business customers.”²⁰ GCI has explained that Anchorage contains at least three distinct product markets that are not necessarily interchangeable.²¹

First, residential users require one or more traditional single line POTS lines. But even within the residential market, customers in multiple dwelling units (“MDUs”) face different competitive alternatives than customers in single-family dwellings. GCI has been unable to deploy voice services to larger MDUs using its network-powered cable telephony service because of a lack of network-powered multiline multimedia terminal adapters (“MTAs”), as well as the operational difficulty of installing additional drops.²² Accordingly, as GCI has previously demonstrated, MDUs should be considered a separate relevant market from single-family dwellings.²³

¹⁹ Comptel Comments at 2.

²⁰ *Omaha Forbearance Order* ¶ 21.

²¹ See generally Sappington Decl. ¶¶ 32-39, 108-112.

²² See GCI Opposition, Exhibit H, *Declaration of Gary Haynes* ¶¶ 17-19 (“Haynes Decl.”).

²³ Sappington Decl. ¶ 29.

Second, small business customers have even fewer competitive alternatives to UNE loops than residential customers. GCI's cable plant does not pass many business locations, and businesses that are passed often are not wired for cable television or other services. Therefore, providing cable-based telephony to these customers not only necessitates extending cable plant to the buildings—a costly and lengthy endeavor—but also requires conduit work, which is impossible during winter months and difficult and time-consuming during other periods.²⁴ For these reasons, GCI often cannot extend cable plant to business customers within a commercially reasonable time.

The third product market is composed of medium to large enterprise customers, who have 8 or more switched business lines or who require higher capacity lines, such as DS1s, fractional DS1s, and high capacity services provided by a combination of GCI electronics and DS0 loops.²⁵ For these customers, alternatives to ACS UNE loops exist only in areas served by GCI's fiber, as there are no DOCSIS standards for DS1 services and thus no standardized DOCSIS products to provide equivalent service via last-mile cable facilities.²⁶ Even in areas where GCI has fiber, it is often neither economic nor feasible to serve customers using fiber, as the electronic equipment is costly to deploy,

²⁴ See GCI Opposition, Exhibit G, *Declaration of Richard Dowling* ¶ 21 (“Dowling Decl.”).

²⁵ Moreover, independent industry participants have placed DS1-based services in a different market from the small business DS0s. See generally Donald Sorenson, *MSO Commercial Services Development, Scientific-Atlanta's Position on the Significance of Commercial Services and the Critical Success Factors for MSOs*, Scientific-Atlanta, Commercial Service Series, http://www.scientificatlanta.com/products/customers/commercialservicesPDFs/0803_G1499A_CommSvcCable.pdf (last visited February 23, 2006); see also Sappington Decl. ¶ 30.

²⁶ See Haynes Decl. ¶¶ 20-22.

access to building entrance facilities is difficult to obtain, and customer demand does not warrant the heavy costs.²⁷

The ACS Supporters fail to acknowledge these differences—or even to analyze whether separate product markets exist. This failure is wholly inexplicable, because the Commission itself separately evaluates product markets and accordingly does not consider all local exchange services to be within the same product market.²⁸ Comptel, on the other hand, correctly notes that “ACS breezes by this important threshold analysis with the claim that the ‘distinction between [product] mass market and enterprise loops is irrelevant.’”²⁹ This is plainly not so, and ACS’s failure to address this fact—repeated by its supporters—necessitates denial of its petition.

C. ACS’s Request for Forbearance Over the Entire Study Area is Baseless.

ACS’s request, echoed by several of the ACS Supporters,³⁰ to forbear from its 251(c)(3) obligations over the entire Anchorage study area flies in the face of the *Omaha Forbearance Order*. As this Commission made clear, the relevant geographic market for all local services is the customer location, which then can be aggregated into areas facing

²⁷ See GCI Opposition, Exhibit J, *Declaration of Blaine Brown* ¶¶ 10–11 (“Brown Decl.”); GCI Opposition, Exhibit C, *Declaration of William P. Zarakas* ¶ 48 (“Zarakas Decl.”).

²⁸ See, e.g., *Omaha Forbearance Order* ¶¶ 18, 21; *In the Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20017 (¶54) (1997) (“*NYNEX-Bell Atlantic Order*”); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, FCC 05-183 (¶ 97) (rel. Nov. 17, 2005) (“*SBC-AT&T Order*”); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, FCC 05-184 (¶ 98) (rel. Nov. 17, 2005) (“*Verizon-MCI Order*”).

²⁹ See Comptel Comments at 9.

³⁰ See, e.g., KPU Comments at 5 (urging “the Commission to approve the request for forbearance for the entire Anchorage study area”); MTA Comments at 14.

similar competitive choices.³¹ As GCI has already demonstrated, all areas of the ACS Anchorage study area do not face the same competitive choices with respect to alternatives to ACS's loops.³²

GCI, for example, is the licensed cable operator in only a portion of the ACS Anchorage study area, not the entire area.³³ Even within GCI's franchise area, its cable plant is not ubiquitous. Moreover, because GCI—in sharp contrast to the situation considered in the *Omaha Forbearance Order*—is still in the process of deploying its cable telephony service, much of the ACS Anchorage study area that falls within GCI's cable service franchise has not yet been upgraded for cable telephony.³⁴ Furthermore, to the extent that the ACS Supporters rely on the presence of GCI's fiber network, that network itself has a limited footprint and does not provide a competitive alternative throughout the ACS Anchorage study area.³⁵ In short, neither ACS nor its supporters has offered any meaningful evidence or analysis of the appropriate geographic markets in Anchorage. As a result of this failure, and particularly in light of GCI's fact-specific analysis of the Anchorage markets, there is no support in the record for ACS's requested study-area wide relief.

III. FORBEARANCE IS NOT NECESSARY TO SPUR FACILITIES INVESTMENT.

The ACS Supporters try to build policy support for ACS's otherwise meritless petition by assuming that access to UNE loops discourages GCI from investing in its own

³¹ See *Omaha Forbearance Order* ¶ 69 n.186; *Accord Sappington Decl.* ¶¶ 32-39.

³² See *Sappington Decl.* ¶¶ 32-39, 108-112.

³³ See *id.* ¶ 36;

³⁴ See *id.* ¶ 36; Haynes Decl. ¶¶ 3-21; GCI Opposition, Exhibit F, *Cable Telephony Nodes, Anchorage Alaska*.

³⁵ See Exhibit BB-1, attached to Brown Decl.

facilities.³⁶ The reality, however, belies this assumption.³⁷ Despite access to UNE elements, GCI has moved as quickly as is technologically and economically feasible to provision voice services over its own cable facilities.³⁸

GCI has consistently worked towards full-facilities-based cable telephone provisioning since it first acquired its cable facilities. In 1996, GCI began a massive multi-year upgrade of its coaxial plant to the hybrid-coaxial cable plant necessary to provide voice services.³⁹ In 1997, GCI purchased and installed its own Lucent 5E switch so that it could provide special services to its customers.⁴⁰ Since then, GCI has invested in and installed a host of voice gateways, Cable Modem Termination Systems, narrowcast lasers, wave division multiplexers, and optical splitters, which together are needed to convert time division multiplexed voice signals from GCI's 5E switch to data packets, which are then modulated onto a Radio Frequency carrier, converted to optical signals, and transported across high capacity fiber optic cable to the optical nodes in the field.⁴¹ Moreover, GCI constructed or upgraded numerous optical nodes to provide network-powered voice service and has installed thousands of trunk adapters, line extenders, and MTA units.⁴²

³⁶ See ATA Comments at 2; KPU Comments at 3, 8; MTA Comments at 10; USTA Comments at 4.

³⁷ Indeed, despite their assumption that UNE access discourages facilities investment, KPU and MTA acknowledge that GCI has in fact invested in its own facilities. See KPU Comments at 4 (noting that GCI "provides all of its own switching services" and "does not rely on ACS for any transport facilities in Anchorage"); MTA Comments at 4 (same).

³⁸ See Dowling Decl. ¶ 12; Haynes Decl. ¶¶ 11, 14.

³⁹ See *id.* ¶ 3.

⁴⁰ See Tindall Decl. ¶ 6. Indeed, GCI has been providing facilities-based service since entering the Anchorage local telephony markets.

⁴¹ See Haynes Decl. ¶ 3.

⁴² See *id.* ¶ 4.

Furthermore, these claims by the ACS Supporters ignore the fact that as of November 2005 GCI had shifted approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of its residential lines, for instance, from UNE loop or resale to its own last-mile facilities. Moreover, as Comptel correctly points out:

As GCI's market share has increased over the past year, it is deploying more—not fewer—of its own facilities, and relying less on unbundled access to ACS's facilities. This is exactly the type of entry the Commission has long predicted would occur—new entrants enter a market by use of UNEs, and migrate to self-provisioned facilities after capturing sufficient market share to make such facilities deployment economical.⁴³

In other words, despite access to UNE loops at TELRIC rates—and contrary to the claims of the ACS Supporters—GCI has increased recent investment in its own last-mile facilities and thus needs no additional encouragement. In fact, GCI is developing its own full-facilities-based voice services at a much faster pace than the decades over which ACS and its predecessors took to construct its own network. Removal of UNE access at this stage of development would restrict, not promote, competition in the Anchorage markets.

As the 1996 Act contemplates, GCI should be allowed to continue its judicious use of UNE loops. GCI invests in its own facilities at a commercially reasonable pace, and relies on UNE loops only where they are economically and technologically necessary. GCI does not, as the ACS Supporters suggest, “covet[] the opportunit[y]” to remain dependent on ACS's loops.⁴⁴ First, GCI does not relish the necessity of paying money to its competitor to provide service. Second, relying on ACS's UNE loops has

⁴³ Comptel Comments at 4 (citing *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, FCC Docket No. 01-338 (¶ 3) (released February 4, 2005) (“TRRO”).

⁴⁴ ATA Comments at 2.

created provisioning delays, unnecessary costs, loss of personnel resources, and reduced customer service.⁴⁵ Finally, and most importantly, GCI wants the stability and quality control that accompanies management of its voice services from end-to-end.⁴⁶ The record demonstrates, in short, that the premature forbearance ACS seeks is not needed to drive GCI's transition to its own facilities.

IV. THE ACS SUPPORTERS' ARGUMENTS REST ON FACTUAL INACCURACIES.

A. ACS Supporters Misrepresent GCI's Current Ability to Provision Anchorage Customers Over its Own Last-mile Facilities.

As mentioned above, ACS Supporters rely on assumptions about only the retail markets to blindly suggest that GCI has the immediate ability to provide voice services over its own cable facilities throughout the Anchorage study area.⁴⁷ This assertion is simply untrue. For one, the ACS Supporters fail to acknowledge that GCI's cable plant does not extend to all areas of the Anchorage markets. Moreover, certain ACS supporters appear to equate the fact that GCI's cable plant "passes" many of the "homes" in Anchorage with an immediate ability to provide voice services to all product markets and areas of Anchorage.⁴⁸ By distorting GCI's abilities (for example, *homes* passed cannot

⁴⁵ See GCI Opposition, Exhibit A, *Declaration of Gina Borland* ¶ 13 ("Borland Decl.").

⁴⁶ See generally *id.* ¶¶ 11–17.

⁴⁷ See ATA Comments at 3 ("ACS's main competitor has, by its own admission, last mile facilities and transport facilities throughout the Anchorage market."); KPU Comments at 4; MTA Comments at 5.

⁴⁸ KPU's and MTA's claim that "[o]f critical importance, GCI acknowledges that its cable system passes some 98% of the homes in the Anchorage market" is a particularly egregious misrepresentation of GCI's facilities. KPU Comments at 4; see also MTA Comments at 4 ("Of equal importance, ACS presents evidence in its petition that GCI's cable system passes some 98% of the homes in the Anchorage market."). This statement stems from ACS's citation to testimony of GCI executive Dana Tindall that "GCI is proud that its cable telephony will pass 98% of homes in Anchorage." *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study*

be a relevant measure of GCI's capability to serve *business* customers), the ACS Supporters demonstrate a thorough misunderstanding of the Anchorage markets and the requirements of provisioning voice services over cable plant.

As GCI detailed in its Opposition, it is transitioning customers to its own full-facilities-based cable telephony as quickly as possible, but it nonetheless relies on UNE loops to serve a majority of its customers throughout Anchorage, especially during the transition and in the business market.⁴⁹ The numbers bear this out. For instance, despite its accelerated transition to cable telephony in Anchorage, as of November 2005, GCI relied on ACS facilities (either leased UNE loops or resale) to provide service to [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of its residential lines,⁵⁰ [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of its small business lines,⁵¹ and [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of its medium and large business locations with non-switched DS1s.⁵²

It is neither technologically nor economically feasible for GCI—or any other non-ILEC—to service many of these customers in the near term without access to UNE loops. Indeed, it would not be economic to extend GCI's fiber network to serve the vast

Area ("ACS Petition"), Exhibit J, *Petition of GCI for Arbitration Under Section 252 of the Communications Act of 1996 with the Municipality of Anchorage a/k/a ATU Telecommunications for the Purpose of Instituting Local Exchange Competition*, RCA Docket No. U-96-89, Prefiled Rebuttal Testimony of Dana Tindall on Behalf of GCI, at 5 (filed with the RCA on Sept. 29, 2003) (emphasis added). Ms. Tindall's statement, however, addresses only GCI's *future* plans and not its current capabilities (it uses "will" rather than "does"). Both KPU and MTA fail to include that important qualifier. And, significantly, as mentioned above, the fact that cable "passes" "homes" in Anchorage does not mean that GCI can currently provide voice service to those homes and says nothing about the many business customers that GCI's cable does not "pass."

⁴⁹ See generally GCI Opposition at 12–19.

⁵⁰ Zarakas Decl. ¶ 18 and Exhibits I and V, attached thereto.

⁵¹ See Zarakas Decl. ¶ 18 and Exhibits I and IV, attached thereto.

⁵² See Exhibit II, attached to Zarakas Decl.

majority of medium to large business locations.⁵³ Thus, the substantial majority of such locations will continue to be accessible only using UNE loops leased from ACS, even as certain residential locations (that are currently accessible only through UNE loops) become accessible over GCI's last-mile cable facilities. Moreover, even when GCI completes the upgrade of its entire cable system to provide cable telephony, there will still be significant differences within Anchorage as to the competitive substitutes for ACS loops when serving small business customers. Anchorage-wide, GCI will not be able to self-provision loops to serve approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of small business customer lines.⁵⁴

Thus, even pursuant to USTA's suggested standard, under which it would deem GCI to "cover" an area "if merely a truck roll or some other minor work is necessary to initiate voice service," much of Anchorage would not be "covered." In many markets, both geographic and by product, GCI certainly cannot provide voice service with minor work or a truck roll. As detailed in GCI's Opposition, substantial work is required to provide service over cable plant, far beyond a "mere truck roll."⁵⁵ The comments of the ACS Supporters regarding the supposed ease with which GCI can provide voice service to all of Anchorage over its facilities simply demonstrate a lack of understanding of the reality of the Anchorage markets.

B. GCI has Offered Access to Last-mile Facilities, Including Those Few Areas Where it is the Sole Provider.

Despite comments from certain ACS Supporters to the contrary, GCI has in fact offered ACS access to GCI's facilities. USTA, like ACS, seems to conflate GCI's lack of

⁵³ See Zarakas Decl. ¶¶ 44, 48 and Exhibit IX, attached thereto.

⁵⁴ Zarakas Decl. ¶ 36 and Exhibit I, attached thereto.

⁵⁵ See GCI Opposition at 33–34; *see also* Haynes Decl. ¶¶ 3–23; Brown Decl. ¶¶ 10–19.

legal obligation to provide ACS with access to its facilities with an actual failure to do so, stating that “GCI gets mandatory access to ACS’s customers, but ACS does not get equivalent access to customers reached only by GCI.”⁵⁶ Both MTA and KPU take this assumption even further and suggest that GCI has actually “with[e]ld” access “in response to ACS’s request.”⁵⁷ ACS does not even go this far, and for good reason, as GCI has consistently offered ACS access to exclusive GCI facilities.

In all of the Anchorage markets GCI is the sole access provider for only **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** commercial buildings and approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** lines in three residential subdivisions on the Elmendorf Air Force base.⁵⁸ In each of the three subdivisions, for instance, GCI notified ACS that it was deploying facilities and even designed its networks for GR-303 multihosting to provide ACS access to unbundled loops on GCI’s network.⁵⁹ GCI went as far as to provide to ACS, at no charge, a site survey of one of the subdivisions, a tour of its equipment, and a copy of the outside plant work order and assignment sheets to allow ACS to understand the design of GCI’s facilities more thoroughly.⁶⁰ Thus, ACS has had ample opportunity to place its own facilities alongside GCI’s. Moreover, GCI has offered ACS access to customers served in these areas through the lease of unbundled GCI loops.⁶¹ ACS has declined to take these steps. There

⁵⁶ USTA Comments at 5. *Accord ACS Petition* at 10, 13 (stating that GCI “is not required to give ACS or its other competitors access”).

⁵⁷ KPU Comments at 10; MTA Comments at 13.

⁵⁸ *See* Brown Decl. ¶20.

⁵⁹ *See id.* ¶ 21.

⁶⁰ *See id.*

⁶¹ *See id.*

is, consequently, no basis for the ACS Supporters' claims that GCI has refused requests for access to those few lines in Anchorage for which it is the sole provider.

C. VoIP and Wireless are Not Substitutes for UNE Loops in Anchorage.

To the extent that the ACS Supporters suggest that VoIP and wireless services are plausible competitive alternatives to UNE loops for all of the Anchorage markets,⁶² the Commission,⁶³ GCI's Opposition,⁶⁴ and now comments from several ACS Opponents have fully discredited that argument.⁶⁵ First, the Commission has explicitly rejected this contention.⁶⁶ As a factual matter, none of the largest VoIP providers even offer Alaska telephone numbers.⁶⁷ Furthermore, VoIP and wireless services do not provide alternatives for certain products. Time Warner notes, for instance, "neither CMRS nor VoIP services can serve as a replacement for high capacity loops serving business customers."⁶⁸ Even ACS tacitly acknowledges that wireless and VoIP are not ripe as competitive alternatives in Anchorage. In its Petition, ACS asserted that "industry analysts project wireless and VoIP competition to grow significantly in the coming

⁶² See USTA Comments at 5.

⁶³ See, e.g., TRRO ¶ 39 n.188.

⁶⁴ See GCI Opposition at 12 n.30, 79–80.

⁶⁵ See Comptel Comments at 10; Covad Comments at 25-27; Nuvox Comments at 22–24; Time Warner Comments at 15–16.

⁶⁶ See, e.g., TRRO ¶ 39 n.188 ("Although we recognize that limited intermodal competition exists due to VoIP offerings, we do not believe that it makes sense at this time to view VoIP as a substitute for wireline telephony").

⁶⁷ See (Vonage (http://vonage.com/avail.php?lid=nav_avail), Verizon VoiceWing (<https://www22.verizon.com/ForYourHome/VOIP/Order/CallingAreaCodes.aspx>), Packet8

(<http://www.packet8.net/store/index.asp?mode=&pg=products&specific=jnnodpo0>), and Sunrocket (https://www.sunrocket.com/sign_up/availability/viewAvailabilityMap.do)

⁶⁸ Time Warner Comments at 15–16.

years,”⁶⁹ thus, as Comptel observes, ACS presumably concedes such alternatives “are not present in Anchorage today.”⁷⁰

D. USTA Overstates the Burdens of ACS’s Incumbent Status.

USTA laments the “burdens imposed” on ACS as an incumbent carrier.⁷¹ Its comments, however, exaggerate any such burdens and overlook the benefits that ACS receives as an incumbent. For instance, ACS receives substantial income from GCI, its main competitor. Further, because USF support payments to ACS are based on embedded costs, ACS faces substantially less risk than GCI in making new network investments. Nor does ACS face significant burdens as a carrier of last resort, as its line extension tariff shifts most line extension costs from ACS to its subscribers.⁷² Further, many of the “administrative burdens” imposed on ILEC’s referenced by USTA cease to apply to “non-dominant” carriers.⁷³ Because ACS has, without GCI opposition, applied to the State Commission for non-dominant status, it will shortly be relieved of much of the “burden” of incumbency. Notably, ACS has never sought a similar declaration of non-dominance from the Commission—an omission that is all the more glaring in the wake of the *Omaha Forbearance Order*.

⁶⁹ ACS Petition at 17.

⁷⁰ Comptel Comments at 10.

⁷¹ See USTA Comments at 6.

⁷² ACS’s line extension tariffs require any customer that is more than 1000 feet away from existing facilities to pay the full cost of extending the facilities beyond 1000 feet, and to pay, in advance, four years of basic service charges (which is offset against construction fees). If the customer moves or otherwise drops service for any reason, it loses those prepaid service fees. Notably, although ACS’s line extension tariffs credit the prepaid four years of basic service charges against construction fees, charges in addition to the basic service fee are not so credited and provide additional revenue to ACS.

⁷³ See USTA Comments at 6.

V. ACS SUPPORTERS ADVOCATE RELIEF UNSUPPORTED BY THE *OMAHA FORBEARANCE ORDER*.

While GCI disagrees with the Commission’s blanket finding that Section 251(c)(3) is “fully implemented” for purposes of Section 10(d),⁷⁴ the Commission’s analysis certainly does not provide a free pass on Section 251(c)(3) forbearance, as ATA seems to suggest.⁷⁵ That ATA fails to recognize that ACS still must meet the forbearance requirements laid out in Section 10(a)—a task that ACS has manifestly failed—only underscores ATA’s flawed reasoning.

Moreover, the ACS Supporters disregard the importance of the Commission’s refusal to forbear from Section 271 loop unbundling requirements in granting limited Section 251(c)(3) relief in the *Omaha Forbearance Order*. As GCI pointed out in its Opposition and as several ACS Opponents have likewise noted, continued applicability of Section 271 ensures that unbundled loops in Omaha remain available at rates that are required to be “just and reasonable” pursuant to Section 271, even where the Commission forbore from Section 251(c)(3). The Commission specifically relied upon Qwest’s continuing obligation to provide unbundled loops under Section 271 as a basis for rejecting arguments that forbearance would result in consumers facing “risk of duopoly and of coordinated behavior or other anticompetitive conduct.”⁷⁶ Thus, the Commission rejected Qwest’s request to be freed of all requirements to provide unbundled loops specifically because the Commission was concerned that without the competition that

⁷⁴ See GCI Opposition at 57 n.216.

⁷⁵ See ATA Comments at 4.

⁷⁶ *Omaha Forbearance Order* ¶ 71.

unbundled loops provide, “telecommunications services available to consumers might not be offered on just, reasonable and non-discriminatory terms.”⁷⁷

Curiously, not a single ACS Supporter acknowledges the essential role that the Section 271 unbundling requirements played in the Commission’s *Omaha Forbearance Order*. In fact, the ACS supporters claim that forbearance is required under the reasoning of the *Omaha Forbearance Order* without once citing Section 271 or acknowledging the fundamental distinction in treatment of former Bell companies compared with non-former Bell companies, such as ACS. Here, because ACS is not subject to Section 271 obligations, were the Commission to forbear from Section 251(c)(3), as ACS requests, there would remain no statutory requirement of any kind to make unbundled loops available, whether at a TELRIC rate or any other “just and reasonable” rate. The logic of the *Omaha Forbearance Order* therefore requires at a minimum that ACS’s Section 251(c)(3) obligation to make unbundled loops available remain in effect.

VI. THE COMMENTS OF THE ACS SUPPORTERS ARE ANTICOMPETITIVE AND EVINCE A DESIRE TO DISRUPT GCI’S OPERATIONS.

A. MTA’s Comments Misrepresent Facts in Separate Proceedings in an Apparent Effort to Disrupt GCI Entry Into its Markets.

In an effort to cast doubt on GCI’s commitment to facilities-based competition, MTA asserts that GCI misrepresented its intention not to use UNE loops in MTA’s service areas in an unrelated proceeding before the Regulatory Commission of Alaska (“RCA”). MTA states that “GCI represented to the state regulatory commission that it is fit, willing and able to provide service *throughout* the requested service areas without

⁷⁷ *Id.* ¶ 103.

benefit of either UNEs or resale services at wholesale rates.”⁷⁸ This is untrue. GCI’s application actually stated:

GCI will offer service in these new areas using a combination of methods. To a large extent, GCI will deliver “cable telephony” services over its existing cable systems in these areas. GCI may also employ wireless systems and resale of other carriers’ services. When and where available in the future, GCI may also use unbundled network elements and ‘wholesale resale’ from incumbent local exchange carriers. However, this application is not dependent on the availability of unbundled network elements, wholesale resale, or on a decision by the Commission on whether or not the affected local exchange companies have or should retain a rural exemption. Even local exchange carriers that retain a rural exemption are obligated under federal law to interconnect with GCI and allow resale of their services.⁷⁹

In other words, GCI made clear that it was planning to provide services over its own facilities, but that it would also rely on UNE loops and resale service where available. Never, as MTA asserts, did GCI claim that it would provide cable telephony “throughout” the new areas without the benefit of UNE loops.

Moreover, and again contrary to MTA’s assertions, the RCA’s decision in that matter did not rest on GCI’s allegedly inconsistent statements, but rather on a concern that a loss of USF revenue would drive MTA from the market.⁸⁰ That concern—which GCI maintains was unfounded—was specific to MTA’s markets, which present entirely different economic issues than the markets in Anchorage. The less populated MTA markets have less concrete, for example, and more aerial cable. Moreover, MTA’s

⁷⁸ MTA Comments at 7 (emphasis added).

⁷⁹ *Application by GCI Communication Corp. to Amend Its Certificate of Public Convenience and Necessity to Provide Local Exchange Service*, RCA Docket No. 05-004, at 3–4.

⁸⁰ GCI notes that the most significant economic harm raised by MTA in that matter is speculative. MTA cited its potential loss of high-cost USF support if and when the Commission implements its rule providing for loss of USF support when UNE-based subscriber lines are lost to a competitor.

service areas are less likely to be filled with the MDUs and medium to large businesses for which GCI relies heavily on UNE loops in Anchorage. For these reasons, the economics of providing service in MTA's markets differ markedly from the economics of providing service in Anchorage markets, and as a result any forbearance analysis will likewise differ. Because the differences between the MTA and Anchorage markets make the RCA Order all but irrelevant here, and because MTA was already granted the relief it sought by that order, MTA's only conceivable motivation in raising this matter is to injure GCI and ensure maximum disruption of its operations and capital so as to impede GCI's deployment of its own facilities in MTA's service area.

B. USTA's Request for Quick Relief Reveals its Interest in Disrupting Competition.

Similarly, USTA demonstrates its anticompetitive intent by asserting that the Commission must grant forbearance quickly, before GCI has a chance to upgrade its facilities on its own.⁸¹ USTA urges the Commission to act swiftly, arguing that a long transition period "could effectively vitiate any relief that is granted because at the end of that time period it is likely that GCI will have already relinquished all UNEs provided by ACS."⁸² This reasoning acknowledges that GCI is quickly deploying its own full-facilities-based cable telephony and, thus, contradicts claims of USTA and other ACS Supporters that access to UNE loops forestalls GCI's deployment of its own facilities. The only logical conclusion from this contradiction is that USTA and other ACS Supporters recognize that GCI needs no additional motivation to invest in its own facilities, but rather simply desire forbearance in an attempt to disrupt GCI's service and

⁸¹ See USTA Comments at 8; *see also* KPU Comments at 11; MTA Comments at 13.

⁸² See USTA Comments at 8.

injure its brand.⁸³ The needless and harmful service disruption that would result from granting ACS's Petition is neither "consistent with the public interest" nor protective of the consumers of Anchorage and, thus, would be incompatible with the Section 10(a) forbearance requirements.⁸⁴

VII. CONCLUSION

In short, the markets in Anchorage are not ready for removal of ACS's Section 251(c)(3) unbundling obligations. Although GCI has accelerated investment and deployment of its own full-facilities-based cable telephony, for many types of services in many areas of Anchorage it is not yet in a position to offer competitive alternatives to consumers without access to UNE loops. Removal of such access will endanger past progress and hinder future competition, thus frustrating the very purpose of Section 251(c)(3) and the 1996 Act. The comments of the ACS Supporters, like ACS itself, offer no credible response to this simple truth. As such, the ACS Petition for Forbearance should be denied.

⁸³ MTA and KPU each tacitly acknowledge the "disruption" that will be caused from removing UNE access through its contention that such disruption could be mitigated by a "transition period." KPU Comments at 11 n.32; MTA Comments at 13 n.33.

⁸⁴ 47 U.S.C. § 160(a).

Respectfully submitted,

/s/

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